

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended, as depicted in the table below, by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
April 12, 1995	September 16, 1998	Statute: NDCC 38–14.1–37(4); NDCC 38–12.1–08; Rule: NDAC 43–02–01.

3. Section 934.16 is amended by removing and reserving paragraphs (y) and (z).

[FR Doc. 98–24781 Filed 9–15–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[PA 122–4078c; FRL–6160–8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Interim Final Determination that Pennsylvania Continues to Correct the Deficiencies of its Enhanced I/M SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rule granting full conditional approval of the Commonwealth of Pennsylvania's enhanced motor vehicle inspection and maintenance (I/M) program, under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the Clean Air Act (CAA). Based on the approval, EPA is making an interim final determination, by this action, that the Commonwealth has continued to correct the deficiency prompting the original disapproval of the Pennsylvania enhanced I/M SIP revision. This action will defer the application of the offset sanction which would have been implemented on August 29, 1998, and defers the future application of the highway sanction. Although this action is effective upon publication, EPA will take comment on this interim final determination as well as EPA's approval of the Commonwealth's submittal. EPA will publish a final action taking into consideration any comments received on EPA's direct final rule and this interim final action.

DATES: Effective dates September 16, 1998.

COMMENTS: Comments must be received by October 16, 1998.

ADDRESSES: Comments should be mailed to Marcia Spink, Associate Director, Office of Air Programs, Mail code 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street—14th Floor, Philadelphia, Pennsylvania 19103; and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, at the EPA Region III address above; or via e-mail at rehn.brian@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:**I. Background**

Pennsylvania's March 1996 I/M SIP Revision Approval Status

By means of an April 13, 1995 letter, EPA notified Pennsylvania that the conditional approval of the Pennsylvania enhanced I/M SIP revision, approved in August of 1994, had been converted to a disapproval (60 FR 47084). The letter triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the CAA. That 18-month sanctions clock expired on October 13, 1996. On March 22, 1996, the Commonwealth of Pennsylvania submitted an enhanced I/M SIP revision to EPA, requesting action under the NHSDA of 1995 and the CAA. On June 27, 1996 and July 29, 1996, supplements

to the March 22, 1996 SIP revision were officially submitted to EPA.

On October 3, 1996, EPA proposed in the **Federal Register** (61 FR 51598) conditional approval, on an interim basis for an 18-month period, of a SIP submitted by the Commonwealth in March 1996. That proposed SIP approval was granted under authority of the National Highway Systems Designation Act of 1995 (NHSDA) and the Clean Air Act (CAA). EPA simultaneously issued an interim final determination action in the **Federal Register** (61 FR 51598), which deferred the imposition of the 2:1 offset sanction upon new or modified sources seeking permits under section 173 of the CAA. The 2:1 offsets sanction would otherwise have been automatically imposed upon Pennsylvania on October 13, 1996. Since EPA had received a SIP submittal from the Commonwealth of Pennsylvania for its enhanced I/M program in March of 1996, and since EPA proposed approval of that SIP revision on October 3, 1996, EPA believed the October 3, 1996 interim final determination to defer sanctions was justified. EPA concluded at that time that it was more than likely than not that Pennsylvania had corrected the deficiency which had initiated the sanctions clock, and therefore, did not believe sanctions were warranted simply because EPA had insufficient time to complete its final rulemaking action to approve the Commonwealth's March 1996 I/M program SIP revision. On January 28, 1997, EPA issued in the **Federal Register**, final interim conditional approval of the Commonwealth's March 1996 SIP revision (62 FR 4004).

On November 13, 1997, February 24, 1998, and August 21, 1998, Pennsylvania submitted formal revisions to its enhanced I/M program SIP. The purpose of these SIP revisions was to remedy deficiencies identified by EPA in its January 28, 1997 (62 FR 4004) interim conditional approval of Pennsylvania's enhanced I/M program SIP. It also served to transmit

Pennsylvania's demonstration of the effectiveness of its decentralized testing program (compared to a centralized program) in achieving the emissions reductions credits claimed by Pennsylvania in its SIP, required under section 348 of the National Highway Systems Designation Act.

On August 11, 1998, EPA signed a direct final rulemaking action to approve the Commonwealth's November 1997 and February 1998 SIP revisions, which addressed several of the deficiencies identified by EPA in its January 28, 1997 (62 FR 51638) interim conditional approval of the Commonwealth's enhanced I/M SIP.

EPA's Current Rulemaking Actions

In the Final Rules section of today's **Federal Register**, EPA has taken direct final rulemaking action to approve the Commonwealth's NHSDA network effectiveness demonstration, and to approve the Commonwealth's SIP revisions submitted to remedy the deficiencies identified by EPA in its January 28, 1997 interim conditional approval (61 FR 51638). EPA simultaneously issued, in the Proposed Rules section of today's **Federal Register**, a document proposing to take the same action upon the Commonwealth's SIP revision in the event EPA receives adverse comments on the direct final rule.

EPA believes that, as a result of today's related rulemaking actions, that it is more likely than not that the March 22, 1996 enhanced I/M SIP revision, as supplemented on June 27, 1996, July 29, 1996, November 1, 1996, November 13, 1997, February 24, 1998, and August 21, 1998 (hereafter referred to as "the I/M SIP revision"), continues to remedy the SIP deficiency triggering the sanctions clock for the duration of EPA's rulemaking process on this I/M SIP revision. This interim determination will not halt or reset the sanctions deadline, but will continue to defer the implementation of sanctions until either: EPA's January 28, 1998 conditional approval is converted to a disapproval, or the Commonwealth's enhanced I/M SIP is fully approved.

Today EPA is also providing the public with an opportunity to comment on this interim final determination. If, based on any comments received by EPA upon this interim final determination action and any comments on EPA's approval of the Commonwealth's I/M SIP revision, EPA determines that the SIP revision is not approvable and this final action was inappropriate, EPA will take further action to disapprove the Commonwealth's I/M SIP revision. If

EPA's approval of the Pennsylvania I/M SIP revision is not finalized, then sanctions would be applied as required under section 179(a) of the CAA and 40 CFR 52.31.

II. EPA Action

Based on the approval set forth elsewhere in today's **Federal Register**, EPA believes that it is more likely than not that the Commonwealth has corrected the deficiencies that prompted the original disapproval of the Pennsylvania enhanced I/M SIP for which the April 13, 1995 finding of failure to submit was issued. Therefore, EPA concludes that sanctions should continue to be stayed for the duration of Pennsylvania's conditional SIP approval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

Because EPA has preliminarily determined that the March 22, 1996 Pennsylvania I/M SIP revision is conditionally approvable, relief from future sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.¹ 5 U.S.C. 553(b)(B). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the Commonwealth's March 1996 I/M SIP revision (including all subsequent SIP revisions). Through this interim final determination action, the Agency believes that it is more likely than not that the Commonwealth has continued to correct the deficiency for which the sanctions clock was started (i.e., failure on the part of the Commonwealth's to have an approved enhanced I/M SIP under sections 182 and 184 of the Clean Air Act).

Therefore, it is not in the public interest to initially apply sanctions when the Commonwealth has most likely corrected the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through

¹ As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

notice-and-comment rulemaking on a finding that the Commonwealth has corrected the deficiency prior to the rulemaking approving the Commonwealth's enhanced I/M SIP revision. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while EPA completes its rulemaking process on the approvability of the Commonwealth's I/M SIP revision. In addition, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review. The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that

imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. EPA's approval action today maintains conditional approval status, granted by EPA in January 1997. Approval of a SIP submittal under section 110 and subchapter I, part D of the CAA does not create any new requirements but simply approves requirements that a state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. (*Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2)).

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must

prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this direct final approval action for Pennsylvania's enhanced I/M SIP revision must be filed in the United States Court of Appeals for the appropriate circuit by November 16, 1998. Filing a petition for reconsideration by the Administrator of this interim final determination does not affect the finality of this rule pertaining to the Pennsylvania enhanced I/M SIP for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. §§ 7401-7671q.

Dated: August 28, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98-24731 Filed 9-15-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 122-4078a; FRL-6160-6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves an August 21, 1998 State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to supplement its enhanced motor vehicle emissions inspection and maintenance (I/M) program SIP. The August 21, 1998 SIP revision submittal addresses the seven remaining minor, or *de minimus*, deficiencies cited in EPA's January 28, 1997 conditional interim approval of Pennsylvania's enhanced I/M program. In addition, Pennsylvania submitted a demonstration of the effectiveness of its decentralized network required under the National Highway Systems Designation Act of 1995 (NHSDA). The intended effect of this action is to remove all remaining *de minimus* conditions imposed by EPA in its January 28, 1997 conditional interim approval of Pennsylvania's March 1996 enhanced I/M SIP revision, and to approve the Commonwealth's decentralized network effectiveness demonstration. EPA is hereby removing the interim approval status of the Commonwealth's I/M SIP, granted under the NHSDA. However, as Pennsylvania must still provide specific information related to one condition of the January 28, 1997 approval of its enhanced I/M program, the